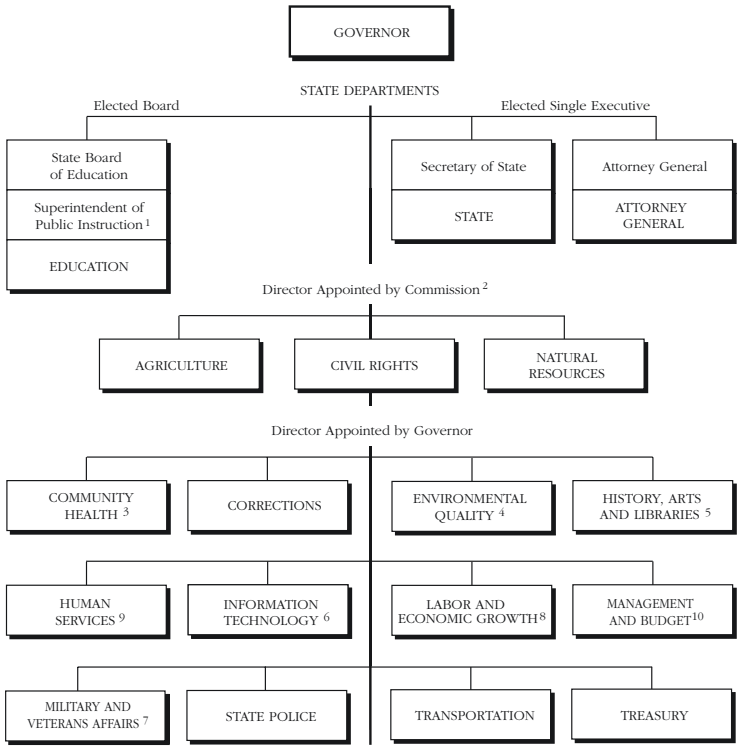
PROFILE OF THE EXECUTIVE BRANCH

The executive power is vested in the governor, who is responsible for the faithful execution of the laws of the state. Elected by the people to a 4-year term, the **governor**:

- Supervises the principal departments of the executive branch and appoints members to state boards and commissions;
- May direct an investigation of any department of state government and may require written information from executive and administrative state officers on any subject relating to the performance of their duties;
- May remove elective and appointive officers of the executive branch for cause, as well as elective county, city, township, and village officers;
- Submits messages to the legislature and recommends measures considered necessary or desirable;
- Submits an annual state budget to the legislature, recommending sufficient revenues to meet proposed expenditures;
- May convene the legislature in extraordinary session;
- May call a special election to fill a vacancy in the legislature or the U.S. House of Representatives, and may fill a vacancy in the U.S. Senate by appointment;
- May grant reprieves, commutations of sentences, and pardons;
- May seek extradition of fugitives from justice who have left the state and may issue warrants at the request of other governors for fugitives who may be found within this state;
- Signs all commissions, patents for state lands, and appoints notaries public and commissioners in other states to take acknowledgements of deeds for this state;
- Serves as chairperson of the State Administrative Board, which supervises and approves certain state expenditures, and has veto power over its actions; and
- Serves as commander-in-chief of the state's armed forces.

The **lieutenant governor** is nominated at party convention and elected with the governor. The term of office, beginning in 1966, changed from two years to four years. The lieutenant governor serves as President of the Michigan Senate, but may vote only in case of a tie. The lieutenant governor may perform duties requested by the governor, but no power vested in the governor by the Constitution of 1963 may be delegated to the lieutenant governor. The lieutenant governor is a member of the State Administrative Board and would succeed the governor in case of death, impeachment, removal from office, or resignation.

ORGANIZATION OF THE EXECUTIVE BRANCH



NOTE: Section 2 of Article V of the Constitution of the State of Michigan of 1963 provides that all executive offices, agencies and instrumentalities of the executive branch of state government and their respective functions, powers, and duties, except for the office of governor and lieutenant governor and the governing bodies of institutions of higher education, shall be "allocated by law among and within not more than 20 principal departments." The initial allocation of departments "by law" was completed with the enactment of the Executive Organization Act of 1965, Act 380 of 1965, being 16.101 et seq. of the Michigan Compiled Laws, which vested all executive and administrative powers, duties, and functions in 19 principal departments.

[1] The Superintendent of Public Instruction is appointed by the State Board of Education pursuant to Const. 1963, art. VIII, sec. 3.

[2] The members of the Commission of Agriculture, Civil Rights Commission, and Commission of Natural Resources are appointed by the governor, by and with the advice and consent of the senate.

[3] The Department of Mental Health was renamed the Department of Community Health by Executive Order No. 1996-1, effective April 1, 1996. The Department of Public Health was renamed the Community Public Health Agency by Executive Order No. 1, effective April 1, 1996, and then redesignated as a Type II agency in the Department of Community Health by Executive Order No. 1997-4, effective May 18, 1997.

[4] Environmental protection was given cabinet-level priority by Executive Order No. 1995-18, which created the Michigan Department of Environmental Quality as a new principal department, effective October 1, 1995.

[5] The Department of History, Arts and Libraries was created as a new principal department by Act 68 of 2001, effective August 6, 2001.

[6] The Department of Information Technology was created as a new principal department by Executive Order No. 2001-3, effective October 14, 2001.

[7] The Department of Military Affairs was renamed the Department of Military and Veterans Affairs by Executive Order No. 1997-7.

[8] The Department of Labor and Economic Growth (DLEG) was created by Executive Order No. 2003-18, effective December 7, 2003. The new department essentially combined the offices, responsibilities, and personnel of the Department of Consumer and Industry Services and the Department of Career Development. The order also transferred various agencies among DLEG and the Departments of Community Health, Environmental Quality, Management and Budget, State Police, Transportation, and the Family Independence Agency.

[9] The Family Independence Agency was renamed the Department of Human Services by Executive Order No. 2004-38, effective March 15, 2005.

[10] The Department of Civil Service was abolished by Executive Order No. 2007-30, effective August 26, 2007, with the principal duties carried out by the Civil Service Commission transferred to the Department of Management and Budget.

EXECUTIVE BRANCH REORGANIZATION

Early Efforts

One of Michigan's earliest attempts at reorganizing and integrating the growing number of state agencies, boards, and commissions was initiated by Governor **Alexander J. Groesbeck** in 1920. At his urging, the legislature enacted a statute creating the State Administrative Board to set administrative policy for more than 100 independent departments, bureaus, commissions, and agencies. The board, which consisted of the governor, secretary of state, state treasurer, auditor general, attorney general, highway commissioner, and superintendent of public instruction, merged 33 boards and agencies into five new departments — Agriculture, Conservation, Labor, Public Safety, and Welfare. Other efforts at administrative consolidation were initiated by Governor **Frank Murphy** in 1936, under the Commission on Reform and Modernization of Government. And in 1949, the Joint Legislative Committee on Reorganization of State Government, sometimes referred to as the "little Hoover commission," was created to study the issue of executive branch reorganization. One of the committee's recommendations — allowing the governor to propose a reorganization subject to legislative disapproval — was later embodied in Act 125 of 1958, which established a method by which the governor could submit plans for the reorganization of executive agencies to the legislature, subject to disapproval by either house:

> Sec. 1. Within the first 30 days of any regular legislative session, the governor may submit to both houses of the legislature at the same time, 1 or more formal and specific plans for the reorganization of executive agencies of state government.
>
> Sec. 2. A reorganization plan so submitted shall become effective by executive order not sooner than 90 days after the final adjournment of the session of the legislature to which it is submitted, unless it is disapproved within 60 legislative days of its submission by a senate or house resolution adopted by a majority vote of the respective members-elect thereof.
>
> Sec. 3. The presiding officer of the house in which a resolution disapproving a reorganization plan has been introduced, unless the resolution has been previously accepted or rejected by that house, shall submit it to a vote of the membership not later than 60 legislative days after the submission by the governor to that house of the reorganization plan to which the resolution pertains.

A reorganization plan not disapproved by one or the other house of the legislature in the manner set forth in the act was to be considered for all purposes as the equivalent in force, effect, and intent of a public act of the state upon its taking effect by executive order. In addition, a reorganization plan not disapproved by one or the other house of the legislature was to be subject to the provisions of the state constitution respecting the exercise of the referendum power reserved to the people in the same manner as prescribed for the approval or rejection of any legislative enactment subject to the referendum power.

Both Governor **G. Mennen Williams** and Governor **John Swainson** submitted reorganization plans to the legislature under authority of Act 125 of 1958, but, with one exception, all were rejected by the legislature.

Constitutional Convention of 1961

The extent of constitutional authority to be granted the governor to reorganize state government was debated again at the Constitutional Convention of 1961. While a minority of delegates believed that the executive branch committee **proposal requiring a two-house veto of executive reorganization orders** would allow a governor to wield "tremendous political power," a majority favored the proposal, believing it would lead to a stronger chief executive. The adopted proposal provided that after the "initial allocation" of agencies by law the governor

> . . . may make changes in the organization of the executive branch or in the assignment of functions among its units which he considers necessary for efficient administration. Where these changes require the force of law, they shall be set forth in executive orders and submitted to the legislature. Thereafter the legislature shall have 60 calendar days of a regular session, or a full regular session if of shorter duration, to disapprove each executive order. Unless disapproved in both houses by a resolution concurred in by a majority of the members elected to and serving in each house, each order shall become effective at a date thereafter to be designated by the governor. [Const. 1963, art. V, sec. 2.]

The record of the constitutional convention indicates that the convention's purpose in including this provision was to facilitate economy and efficiency in the executive agencies. The convention felt that the legislature previously had failed to effectuate a reorganization itself, and that the governor was in the best position to accomplish the desired ends, having intimate knowledge of the administrative problems in state government. And, although the convention recognized that the reorganization power granted the governor was *legislative in nature,* the delegates chose to include this delegation to the governor in the constitution, subject to checks and balances considered necessary to restrain the broad grant of power.

In 1963, the people of the State of Michigan adopted the new constitution, which, in addition to granting the governor the power to reorganize by executive order, provided for the **mandatory reorganization of executive offices and agencies** into no more than 20 principal departments:

> All executive and administrative offices, agencies and instrumentalities of the executive branch of state government and their respective functions, powers and duties, except for the office of governor and lieutenant governor and the governing bodies of institutions of higher education provided for in this constitution, shall be allocated by law among and within not more than 20 principal departments. They shall be grouped as far as practicable according to major purposes.

The legislature was given the authority to undertake the initial reorganization. But if the legislature failed to complete the reassignments in two years, the governor was authorized to make the initial reorganization within one year thereafter.

Executive Organization Act of 1965

In fact, the initial allocation of executive branch offices, agencies, and instrumentalities among 19 principal departments was effected by the legislature through the enactment of the Executive Organization Act of 1965, MCL 16.101 *et seq*. Consequently, the governor was never required to undertake the allocation of agencies, although on several occasions, he has used his reorganization power to make changes in the organization of the executive branch.

The act provides a general mechanism for placing existing agencies into the framework of the 19 principal departments. Three types of transfers could be effectuated. Under a **Type I transfer**, an agency is merely identified as being within a particular department; the agency continues to perform its functions as prescribed by statute. Under a **Type II transfer**, the agency loses autonomous control of its functions — "all its statutory authority, powers, duties and functions, records, personnel, property, unexpended balances of appropriations, allocations or other funds, including the functions of budgeting and procurement [are] transferred to that principal department." Under a **Type III transfer**, the agency is abolished. MCL 16.103(c); MSA 3.29(3)(c). While the supreme court has noted that the governor should use these transfer mechanisms when issuing a reorganization plan, it has nevertheless recognized he is not bound to follow such procedures.

Separation of Powers

It has been argued that broad legislative power to reorganize the executive branch granted the governor could not have been intended by the framers of the 1963 Constitution since it violates the doctrine of separation of powers by commingling executive and legislative functions within one branch of the government.

In *Soap and Detergent Association* v *NRC*, 415 Mich 728 (1982), the supreme court noted that the doctrine of separation of powers is generally attributed to Montesquieu who pinpointed the fault with the vesting of both legislative and executive functions in one branch of the government:

> When the legislative and executive powers are united in the same person of body . . . there can be no liberty; because *apprehensions may arise, lest the same monarch or senate should enact tyrannical laws, to execute them in a tyrannical manner.* (Emphasis added.)

But Madison, in the Federalist No. 47, clarifies Montesquieu, explaining that he did not mean there could be no overlapping of functions between branches, or no control over the acts of the other. Rather,

> . . . [h]is meaning . . . can amount to no more than this, that where the *whole* power of one department is exercised by the same hands which possess the *whole* power of another department, the fundamental principles of a free constitution are subverted. [The Federalist No. 47 (J. Madison).]

These principles have been adopted in Michigan. Thus, while Const. 1963, art. 3, sec. 2, provides for strict separation of powers, this has not been interpreted to mean that the branches must be kept wholly separate. Additionally, where, as in Const. 1963, art. 5, sec. 2, the constitution explicitly grants powers of one branch to another, there can be no separation of powers problem.

Further, Const. 1963, art. 5, sec. 2, does not vest all or any considerable legislative power in the executive. While broad legislative power has been delegated to the governor to effectuate executive reorganization, this power is clearly limited. First, the area of executive exercise of legislative power is very limited and specific; second, the executive branch is not the sole possessor of this power; the legislature has concurrent power to transfer functions and powers of the executive agencies; and third, the legislature is specifically granted the power to veto executive reorganization orders before they become law.

Notable Reorganization Efforts

Although previous governors made use of the executive reorganization power, none used it more frequently or as extensively as Governor **John Engler** to reshape the executive branch of state government. During his tenure as governor (1991-2002), he issued more than 100 executive reorganization orders considered necessary for efficient administration. These included orders to revamp the state's job-creating agencies and orders to create entirely new departments, including the Department of Information Technology and the Department of History, Arts and Libraries in 2001.

In 1991, various environmental protection functions were split off from the Department of Natural Resources and a new Department of Environmental Quality was created. The Department of Natural Resources was also reshaped with the governor given authority to appoint the head of the Natural Resources Commission. The executive reorganization order that created the Department of Environmental Quality — Executive Order No. 1991-31 — was challenged by the Speaker of the House and two not-for-profit corporate plaintiffs on the grounds that the order exceeded the governor's limited legislative authority under Const. 1963, art. 5, sec. 2. The case ultimately required the Michigan Supreme Court to determine the scope of authority granted to the governor to effect subsequent changes in the structure of the executive branch; specifically, whether the governor, through an executive order not disapproved by the legislature, could constitutionally transfer the authority, powers, and duties of the legislatively created Department of Natural Resources to a new, gubernatorially created Department of Natural Resources. The court found that Const. 1963, art. 5, sec. 2 authorized the governor to make such broad changes in the organization of the executive branch and that neither the separation of powers doctrine nor the Executive Organization Act of 1965 could be interpreted to prevent the governor from exercising his constitutionally mandated powers. See *House Speaker* v *Governor*, 443 Mich 560 (1993).

Governor **Jennifer Granholm** has utilized her reorganization authority to reshape the executive branch to reflect changed conditions in the state. Executive Order No. 2003-18 (creation of the Department of Labor and Economic Growth) brought about major changes among the agencies faced with responsibilities involving the work place, regulatory matters, and the state's economic development and work force training efforts. Executive Order No. 2007-30 consolidated human resources services, abolished the Department of Civil Service, and transferred the functions of the Civil Service Commission and the State Personnel Director to the Department of Management and Budget.

GUBERNATORIAL APPOINTMENT PROCESS

The selection of qualified individuals to serve in state governmental positions excepted or exempted from state civil service is a responsibility shared by the executive and the legislative branches of government. This joint participation in the appointment process is mandated by the Constitution of the State of Michigan of 1963, which accords the governor certain powers to appoint officials subject to the advice and consent of the Michigan Senate.

Historical Developments

To gain a broader perspective of the governor's appointment powers and the use of advice and consent, it is useful to trace the historical development of the executive/legislative relationship regarding appointments. Due to the deep-seated distrust of, and contempt for, British-imposed colonial governors, many early state constitutions greatly limited the power of the office of the governor. **Michigan's first constitution (1835)**, however, did not follow that pattern — it gave the governor substantial power. The governor had the power to appoint the secretary of state, judges of the supreme court, the auditor general, the attorney general, and prosecuting attorneys for each county. These appointments were subject to senate confirmation. The only state officers popularly elected were the governor, lieutenant governor, and state legislators.

In contrast, the **1850 constitution** reflected the influence of "Jacksonian democracy," ultimately producing the so-called "long ballot." Among the principles of Jacksonian democracy was the belief that public officials should be chosen by election rather than by appointment. Hence, the 1850 constitution provided for the election of all principal state officials, including the secretary of state, state treasurer, attorney general, auditor general, superintendent of public instruction, regents of the University of Michigan, state board of education, and supreme court justices. Accordingly, the governor's appointment power was reduced to filling vacancies.

While the adoption of a **new constitution in 1908** did little to either erode or enhance the governor's appointment power, other developments led to a substantial increase in the number of state officials appointed by the governor. Ironically, it was the legislature that played the most significant role in expanding the gubernatorial appointment power. Of the more than 2,000 appointments for which the governor is responsible today, most are to the approximately 250 boards, commissions, and other advisory bodies, which, in most cases, have been established by statutes enacted by the legislature. Some are created on an ad hoc basis, but many are permanent. As rapidly changing social and economic conditions brought about the emergence of new and more complex problems, state government began to expand. Prior to the adoption of the 1963 constitution there were no limitations on the number of state agencies that could be established and no restrictions on the power of the legislature to assign administrative duties to newly created agencies or positions independent of gubernatorial supervision. Even the **1963 constitution** does not preclude the creation of new agencies. However, article V, section 2 of that document does limit the number of principal departments to ". . . not more than 20 . . . ." Moreover, all executive offices, excluding the offices of governor and lieutenant governor and the university governing boards, are to be allocated within those principal departments.

The Plural Executive

Many newly created agencies were responsible to **boards or commissions** comprised of individuals appointed by the governor. Boards and commissions are common to the administrative structure of many businesses as well as to all levels of government. Proponents of the system argue that by creating a degree of independence, a board or commission can be insulated from political manipulation. The use of staggered or overlapping terms for the members of a board encourages continuity of policy while making it difficult for an executive to appoint a majority of board members during any one term. In addition, the application of bipartisan representation on these bodies ensures some degree of minority representation and input.

Critics of the board or commission role in government object to the lack of accountability of appointees and the possibility of stalemates in the decision-making process. Moreover, perhaps due to the fact that boards and commissions in Michigan state government have evolved gradually over the years, there appears to be little consistency in the internal structure of these bodies, the method used to appoint members, or their functions. For example, in some instances the governor designates a chairperson whose duties are prescribed by law, while in others the governor designates a chairperson whose duties are not prescribed by law. In yet other instances, the statute does not provide for a chairperson or leaves the selection of a chairperson to the board.

Types of Appointments

In addition to appointing a personal executive staff, the governor currently appoints 13 executive department heads with the **advice and consent of the senate**. Two department heads, the secretary of state and attorney general, are popularly elected. The remaining 5 chief executive officers are appointed by the respective board or commission that heads the department.

The governor is also authorized to appoint a limited number of other positions, particularly of a policymaking nature, within most of the principal departments. Those positions, along with the positions within the Office of the Governor, are exempted from civil service. Certain regulatory officials, such as the racing commissioner, are also appointed by the governor with senate confirmation. The members of the boards or commissions that head departments are appointed by the governor with senate confirmation, but the terms for these officials overlap so that a majority of the members cannot be appointed in any one year.

Some of these boards, such as the State Administrative Board, are composed exclusively of state officers serving ex officio (ex officio means "by virtue of office or position"). In some cases the governor serves as an ex officio member of a board or commission. For example, the governor serves as an ex officio member of the State Board of Education and the Michigan Historical Commission. On a number of boards, the heads of executive departments serve as ex officio members.

The governor also appoints the heads of other autonomous agencies such as the lottery commissioner and the director of the Bureau of Workers' and Unemployment Compensation. Most of these appointments require senate confirmation.

Pursuant to Sec. 1104 of the Revised Judicature Act (MCL 600.1104), stenographers for each circuit court of the state ". . . shall be appointed by the governor after having first been recommended by the judge or judges of the court to which he is appointed . . . ." Senate confirmation is not required.

Limitations on Gubernatorial Appointment Power

The common requirement that gubernatorial appointments be confirmed by the senate is the most significant limitation imposed on the appointment power. In addition, in some cases the legislature has brought both the speaker of the house and the senate majority leader into the appointment process.

There are a number of other ways in which a governor is limited in appointing individuals to boards and commissions. Many limitations relate to **statutory conditions** regarding those eligible for appointment. For instance, pursuant to article V, section 5, of the state constitution, ". . . A majority of the members of an appointed examining or licensing board of a profession shall be members of that profession." Furthermore, during the mid-1970s, the legislature amended various laws establishing licensing boards to assure each board had at least one member representing the interests of the general public.

Some statutes establishing boards require that certain groups be represented in the body's total membership. **Bipartisan representation** is mandated for some boards, including the Public Service Commission and Transportation Commission. An example of how the governor is restricted in making appointments is reflected in the composition of the Board of Boiler Rules. Of the 11 gubernatorial appointments, 2 must represent owners and users of boilers within the state, 1 of whom must represent owners and users of power boilers operating at 1,000 p.s.i.g. or more; 2 must represent organized labor in the state engaged in the erection, fabrication, installation, operation, or repair of boilers; 1 must represent boiler repair contractors within the state in the business of repairing boilers by welding and riveting; 1 must represent mechanical contractors within the state having experience in the installation, piping, or operation of boilers; 1 must represent consulting engineers within the state having boiler experience; 1 must represent water tube boiler manufacturers doing business within the state; 1 must represent fire tube boiler manufacturers doing business in this state; 1 must represent boiler insurance companies licensed to do business within the state; and 1 must represent the general public.

Other statutes creating boards or commissions require the governor to appoint members from a **list of nominees** submitted by nongovernmental groups. For example, the members of the board of managers for the Michigan Veterans' Facility are appointed from lists submitted by congressionally chartered veterans organizations.

Certain **territorial divisions** of the state must be represented on certain boards and commissions. For example, of the 7 members appointed to the Ski Area Safety Board, one must be a ski

area manager from the Upper Peninsula and one of the body's public members must be an Upper Peninsula resident with skiing experience.

Advice and Consent

A primary concern of the framers of the U.S. Constitution was preventing a concentration of power in any one branch of government. Accordingly, a system of **checks and balances** was incorporated into the federal constitution. A good example of a check on the legislative branch by the executive is the veto power; and, the advice and consent process represents one method by which the legislative branch can check the executive. In other words, regarding the appointment process, the branch that approves persons to hold office (legislative), does not nominate them (executive); and the branch that nominates (executive), does not originally create the post (legislative).

Article II, section 2, clause 2 of the U.S. Constitution provides, in part, that the President

> . . . shall nominate and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the Supreme Court, and all other Officers of the United States. . . .

This provision has manifested itself in state constitutions in a variety of ways. Most states have a mix of gubernatorial appointments — some requiring confirmation, while others do not. On the other hand, several states, including Indiana, Massachusetts, and Nevada, have no provision for the legislative confirmation of executive appointments, while others, such as Hawaii and New Jersey, require all executive appointments to be so confirmed.

As mentioned previously, the 1963 constitution includes a provision defining **advice and consent**. Article V, section 6, states:

> Appointment by and with the advice and consent of the senate when used in this constitution or laws in effect or hereafter enacted means appointment subject to disapproval by a majority vote of the members elected to and serving in the senate if such action is taken within 60 session days after the date of such appointment. Any appointment not disapproved within such period shall stand confirmed.

The incorporation of this provision in the 1963 constitution effectively reversed the advice and consent process practiced under previous constitutions, none of which provided a definition of advice and consent. Rather than the senate approving an appointment by positive action, this provision requires the senate to disapprove an appointment within 60 session days after submission for consideration. In other words, no action by the Senate constitutes a confirmation of an appointment after 60 session days. The count of 60 session days commences when the secretary of the senate receives written notification of an appointment from the governor's office.

The advice and consent provision incorporated into the 1963 constitution was designed to provide the senate with reasonable time to reject an appointee while at the same time making confirmation definite should the senate choose not to act on an appointment.

This variation of the advice and consent process contrasts with the concept as practiced by the U.S. Senate. Individuals named to federal positions cannot assume the office until they are confirmed. On the federal level, the President nominates and the U.S. Senate appoints; while in Michigan, the governor appoints and the senate confirms or rejects the appointment.

DEVELOPMENT OF THE STATE BUDGET

Creating the state budget is one of the most important activities performed by the legislative and executive branches of Michigan government each year. The state budget is a complete financial plan and encompasses all revenues and expenditures, both operating and capital outlay, of the General Fund, special revenue funds, and federal funds for the twelve-month period extending from October 1 of one year to September 30 of the next. The fiscal year is defined by Act 431 of 1984, as amended. Pursuant to article IX, section 17, of the state constitution, "No money shall be paid out of the state treasury except in pursuance of appropriations made by law."

Constitutional Provisions Relating to the State Budget

The state constitution contains several provisions which govern the development of the state budget. Article V, section 18, of the Constitution of the State of Michigan of 1963 provides that:

> The governor shall submit to the legislature at a time fixed by law, a budget for the ensuing fiscal period setting forth in detail, for all operating funds, the proposed expenditures and estimated revenue of the state. Proposed expenditures from any fund shall not exceed the estimated revenue thereof.

The amount of any surplus or deficit in any fund for the last preceding fiscal year must also be included in the succeeding fiscal year's budget.

At the same time the budget is submitted, the governor submits to the legislature **general appropriation bills** embodying the proposed expenditures. The budget bills are to contain the individual line item accounts, including the number of full-time equated (FTE) positions to be funded. The governor also submits any necessary legislation to provide new or additional revenues to meet proposed expenditures (an appropriation bill, when enacted, provides the legal authorization to make specified expenditures for specified purposes). Like all other bills, appropriation bills need to be introduced by a member or members of the house of representatives or senate before they can be considered by the legislature. Any bill requiring an appropriation to carry out its purpose is considered to be an appropriation bill.

Once the appropriation bills have been introduced into the legislature, the constitution permits the governor to submit amendments to the appropriation bills during consideration of the bills by either house. In practice, however, amendments are offered by members of the house or senate rather than by the governor.

The governor is also required to submit bills to meet deficiencies in current appropriations. The governor may use any number of procedures to fulfill these constitutional requirements, such as asking a legislator to offer amendments to a bill already introduced or to introduce a new bill, or sending letters to the appropriations committees recommending supplemental appropriations or making changes in revenue estimates.

The state keeps track of revenues and expenditures for particular phases of governmental activity through a number of different funds. By statute, the **General Fund** covers all state appropriation, expenditure, and receipt transactions, except those where special constitutional or statutory requirements demand separate fund accounts. Most of the traditional state services are included in this fund. The General Fund is the predominant element in the annual budget review and enactment from the viewpoints of both appropriations and taxes. This is evidenced by the frequent identification of the "General Fund" with the State of Michigan as a whole. The General Fund is financed by what are defined as general purpose and restricted revenues. General purpose revenues (GF-GP) are not restricted to a particular use. Restricted revenues are those resources which, by constitution, statute, contract or agreement, are reserved to specific purposes. Expenditures of restricted revenues are limited by the amount of revenue realized and amount appropriated. In addition to the General Fund, **special revenue funds** are used to finance particular activities from the receipts of specific taxes or other revenue. Such funds are created by the state constitution or by statute to provide certain activities with definite and continuing revenues. Other types of funds include revolving funds, bond funds, bond and interest redemption funds, and trust and agency funds.

As specified in article IV, section 31, of the Constitution of the State of Michigan of 1963:

> The general appropriation bills for the succeeding fiscal period covering items set forth in the budget must be passed or rejected in either house of the legislature before that house passes any appropriation bill for items not in the budget except bills supplementing appropriations for the current fiscal year's operations.

A key element of the process of developing the state's budget is establishing revenue estimates for each of the state funds in sufficient detail to provide meaningful comparisons and summary totals (estimated balances) for each state fund. These total estimates may not be less than the total of all appropriations made from each fund in the general appropriations bills passed. An attorney general opinion clarified this provision by stating that estimated fund balance plus revenue must cover the total appropriated from each fund.

Section 6 and sections 25 through 34 of article IX of the Constitution of the State of Michigan of 1963 limit state expenditures, specify the proportion of the total state spending which must be paid to local governments each year, and require the state to fund new or expanded programs mandated of local government by state government. One executive budget bill and one enacted budget bill must contain an itemized statement of state spending to be paid to units of local government, total state spending from sources of financing, and the state-local proportion derived from that data.

The 1978 amendments to the state constitution (known as the **"Headlee amendment"**) guarantee that local units will receive a proportion of state expenditures not less than they received in fiscal year 1979, which is 48.97% of state revenues. The state is also required to fully fund the cost of any new programs or expanded services mandated of local governments by the state. Legislation enacted to implement the 1978 constitutional amendments excludes from such mandated costs local government employee wage or benefit increases, expenses associated with federally mandated programs, and requirements that do not exclusively apply to local units of government. An example of the latter would be higher water pollution standards which apply to businesses as well as local governments.

Section 26 of article IX, as approved by the voters in 1978, provides that total state revenues (excluding federal funds) which may be expended in any year:

> . . . shall be equal to the product of the ratio of Total State Revenues in fiscal year 1978-1979 divided by the Personal Income of Michigan in calendar year 1977 multiplied by the Personal Income of Michigan in either the prior calendar year or the average of Personal Income of Michigan in the previous three calendar years, whichever is greater.

This ratio cannot be changed without a vote of the people. If total state revenues in a fiscal year exceed the constitutional limit by 1%, refunds are to be made on a prorated basis to citizens who pay the Michigan income tax or single business tax.

A counter-cyclical budget and economic stabilization fund, commonly referred to as the **Budget Stabilization Fund (BSF)**, was created in 1977 to assist in stabilizing revenue and employment during periods of economic recession. In general, the law requires payments into the fund when real economic growth exceeds 2% and allows withdrawals from the fund when real economic growth is less than 0%. Also, any time Michigan's seasonally adjusted unemployment rate exceeds 8% in a given quarter, the legislature may appropriate money from the BSF for projects that are designed to create job opportunities.

Development of the Executive Budget

Initial development of each new fiscal year's budget begins approximately 13 to 14 months prior to the beginning of the new fiscal year, when the individual departments submit management plans to the Department of Management and Budget. Briefings and hearings for the purpose of reviewing requests and preparing budget statements that constitute the state budget are held between department officials, the Office of the Budget in the Department of Management and Budget, and the governor approximately 10 to 11 months before the new fiscal year begins. Final decisions on executive budget recommendations are made based upon revenue estimates provided by the January consensus **revenue estimating conference**. These recommendations and revenue estimates are incorporated in the governor's presentation of the budget to the legislature.

The January consensus revenue estimating conference first convened in 1992, pursuant to 1991 PA 72. This conference was created to develop more accurate revenue forecasts, which are used, along with various targets suggested by the governor for the overall budget, to develop the coming year's budget. The revenue estimating conference also establishes an official economic forecast of major variables of the national and state economies. The principal participants in the conference are the State Budget Director, the Director of the Senate Fiscal Agency, and the Director of the House Fiscal Agency — or their respective designees. The State Treasurer is the designee of the Director of the Department of Management and Budget.

Act No. 431 of 1984, the Management and Budget Act, requires the budget to be submitted within 30 days after the legislature convenes in regular session on the second Wednesday in January, except in a year in which a newly elected governor is inaugurated into office, when 60 days shall be allowed.

After the **governor submits the proposed budget** and accompanying explanations, recommendations, and legislation, the appropriation bills, which are introduced by a member or members of the legislature, are referred to the appropriations committees for hearings and analysis. Legislative passage of the budget bills is usually accomplished prior to the beginning of the new fiscal year. Generally, the governor submits the complete budget in February, the appropriation bills are considered and passed in April by the first house, in early June by the second house, and conference reports or final action is completed around July 4.

The Appropriations Committees

Each house of the legislature has an appropriations committee to review appropriation measures. In 2007-2008, the Senate Appropriations Committee consists of 18 members while the House Appropriations Committee has 30 members. These are the largest standing committees in either house. Both houses' appropriations committees have established subcommittees which generally correspond to the subject matter of the major appropriation bills.

A **Joint Capital Outlay Subcommittee**, consisting of 16 members, eight from each house's appropriations committee, has also been established. The subcommittee selects its own chair, but in practice alternates the chair between the house and senate every two years. The Capital Outlay Subcommittee is responsible for the review, evaluation, and development of all capital outlay (land acquisition, building and construction, addition, and renovation) projects involving state agencies and public universities and community colleges.

Enactment of Appropriations Legislation

By custom, all the appropriation bills are introduced in both houses simultaneously and are divided between the houses for consideration. The bills usually receive more detailed hearings in the house of origin. Generally, all the **appropriation bills are introduced** by each appropriations committee chair or the ranking member of the governor's party, but traditionally only half of the bills move in each house initially. Currently, the practice is to alternate the house of origin each year. This practice allows both appropriations committees to work simultaneously on the appropriation bills.

The appropriations committees conduct a series of **hearings** on the appropriations legislation. First, the Department of Management and Budget presents an overview of the governor's proposed budget to the committees. House Fiscal Agency and Senate Fiscal Agency staffs provide more detailed briefings to their appropriations committees after the presentation by the Department of Management and Budget. The fiscal agencies also prepare detailed reviews and analyses of the governor's proposals, which are made available to all members of the house and senate. Subsequently, the subcommittees in each house receive more detailed information from department officials regarding the executive budget, hold public hearings, and report their recommendations to the full committees.

In the full house and senate committee meetings, the general format involves having the agency heads in attendance when their agency's appropriations are considered to provide any necessary explanation and clarification. The legislative fiscal analyst who works with the particular bill being considered is also present. The analyst may prepare a report or series of reports on the bill. The chair of the subcommittee that considered the bill offers the **committee amendments or substitutes to the governor's recommendations**. The committee members are then free to ask questions about the bill. If the bill is approved by the full committee, the bill is reported to the floor without changes or with amendments or as a substitute.

Prior to floor consideration, the appropriations bills may be discussed in caucus by both parties. In addition to developing a party position, the caucus provides individual legislators with an opportunity to become better informed on the budget or particular items.

The legislative procedure for consideration of the appropriation bills is basically the same as for other bills except that appropriation measures receive priority on the legislative calendars. In many instances, members who are going to offer amendments will propose the changes to the appropriations committees before floor debate. **Floor consideration** varies considerably depending on the particular subject matter, issues, and other factors. There may be minimal debate or it may take a whole day or more for a given bill. Fiscal analysts prepare "floor sheets" summarizing the appropriation bill, the difference in funding from the prior year, the governor's recommendation or the other house's recommendation, new, expanded or eliminated programs, and total FTEs (full time equated positions) authorized.

Differences between the two houses are resolved by a **conference committee** procedure. The committee consists of six members, three from each house. Traditionally, when differences on any of the appropriation bills necessitate a conference committee, the conferees are usually members of their respective house's appropriations subcommittees. Rule 8 of the Joint Rules of the Senate and the House of Representatives provides:

> The conference committee shall not consider any matters other than the matters of difference between the two houses.
>
> For all bills making appropriations, adoption of a substitute by either house shall not open identical provisions contained in the other house-passed version of the bill as a matter of difference; nor shall the adoption of a substitute by either house open provisions not contained in either house version of the bill as a matter of difference.
>
> When the conferees arrive at an agreement on the matters of difference that affects other parts of the bill or resolution, the conferees may recommend amendments to conform with the agreement. In addition, the conferees may also recommend technical amendments to the other parts of the bill or resolution, such as, necessary date revisions, adjusting totals, cross-references, misspelling and punctuation corrections, conflict amendments for bills enacted into law, additional anticipated federal or other flow through funding, and corrections to any errors in the bill or resolution or the title.

The conference committee may reach a compromise and submit a report to both houses of the legislature. If the **conference committee report** is approved by both houses, the bill is enrolled and printed (final copy of a bill in the form as passed by both houses) and presented to the governor. If the conference committee does not reach a compromise, or if the legislature does not accept the conference report, a second conference committee may be appointed.

The same procedures related to approval of other legislation by the governor also apply to appropriation bills, except that the governor has line item veto authority and may disapprove any distinct item or items appropriating money in any appropriation bill. The part or parts approved become law, and the item or items disapproved are void unless the legislature repasses the bill or disapproved item(s) by a 2/3 vote of the members elected to and serving in each house. An appropriation line item vetoed by the governor and not subsequently overridden by the legislature may not be funded unless another appropriation for that line item is approved.

ENACTMENT AND VETO OF APPROPRIATION BILLS, 1982-2006*

Year	Enrolled Appropriations Bills Presented to Governor	Enrolled Appropriations Bills Containing Items Vetoed by Governor
1982	24	13
1983	25	3
1984	23	6
1985	18	5
1986	23	8
1987	23	13
1988	25	4
1989	24	6
1990	26	10
1991	29	16
1992	25	12
1993	22	13
1994	20	7
1995	23	14
1996	22	13
1997	25	8
1998	23	6
1999	22	9
2000	21	12
2001	21	10
2002	24	16
2003	22	11
2004	21	6
2005	18	8
2006	12	6

* Includes bills amending the State School Aid Act of 1979.

Budget Revisions

Since state departmental budgets are planned well over a year in advance, there may be a need to adjust appropriations during the fiscal year.

As provided in the state constitution, no appropriation is a mandate to spend. The governor, by executive order and with the approval of the appropriations committees, must **reduce expenditures authorized by appropriation acts** whenever it appears that actual revenues for a fiscal period will fall below the revenue estimates on which the appropriations for that period were based. By statute, any recommendation for the reduction of expenditures must be approved or disapproved by both of the appropriations committees within 10 days after the recommendation is made. A reduction cannot be made without approval from both committees. Not later than 30 days after a proposed order is disapproved, the governor may submit alternate recommendations for expenditure reductions to the committees for their approval or disapproval. The governor may not reduce expenditures of the legislative or judicial branches or expenditures from funds constitutionally dedicated for specific purposes.

The legislature may reduce line item appropriations in supplemental appropriation bills.

Expenditure increases for a new program or for the expansion of an existing program cannot be made until the availability of money has been determined and the program has been approved and money appropriated by the legislature.

Each department may request **allotment revisions**, legislative or administrative transfers, or supplemental appropriations. The Department of Management and Budget must approve revisions to allotments. Transfer of funds within a department are submitted by the Department of Management and Budget to the house and senate appropriations committees for approval. The legislature and governor act on **supplemental appropriation bills** in a manner similar to original appropriations.

Another method for revising an enacted budget — one that does not contemplate involvement by the legislature — is suggested by a 1921 Michigan statute that provides the **State Administrative Board** has the power to "inter-transfer funds within the appropriation for [a] particular department, board, commission, officer or institution." Invoking this law in a special meeting on May 9, 1991, the board, which consists of the governor, the lieutenant governor, the secretary of state, the attorney general, the superintendent of public instruction, and the state treasurer, adopted 11 resolutions authorizing the transfer of funds from one purpose or program to another within several departments of state government. This action was challenged in a lawsuit filed by the speaker of the house of representatives, the chair of the house appropriations committee, the minority leader of the senate, and the vice-chair of the senate appropriations committee on the grounds that it exceeded the board's statutory authority and violated the state constitution. On July 9, 1991, the Michigan Court of Appeals held that the State Administrative Board was without authority to inter-transfer funds within state departments. The court concluded that the legislature had intended the Management and Budget Act to occupy the whole field of the budget process and to provide the exclusive means of transferring appropriations within any department. On appeal, the Michigan Supreme Court reversed with regard to this issue, holding, in effect, that the State Administrative Board has authority to transfer appropriated funds from one program to another within a department of state government under Sec. 3 of Act 2 of 1921. *House Speaker* v *State Administrative Board,* 441 Mich 547 (1993).